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Public Testimony on Assembly Bill 793 Assembly Committee on Public Health February 13, 2008

Honorable Chairman Hines and Members:

As a lead sponsor of Assembly Bill 793 I would like to thank you for the opportunity to share with you my support of AB 793, a proposal which will improve the quality and safety of health care delivery in Wisconsin. The bill before us today is the product of intensive work by a wide array of stakeholders, including DHFS who took the lead in bringing these groups together to produce a bill that balances patients' health needs with an individual's right to privacy. Furthermore, AB 793 will bring Wisconsin statutes in greater sync with federal HIPPA law.

State statutes have not kept up with today's advances in electronic record keeping, data sharing and information security. The result can place unreasonable restrictions on the exchange of health information between health networks. Physicians who serve different health systems are often barred from sharing health records resulting in delayed care and increased administrative overhead. Under the changes proposed in AB793, doctors will be able to make health record sharing decisions with patients' health - not bureaucratic logistics - as their sole determining factor.

In addition, AB 793 will benefit patients' families. The bill allows patients to identify family members and friends with whom they would like their health care provider to share information. If a patient is physically or cognitively incapable of granting permission to share records, this bill allows a doctor to use his or her professional judgment to act in the best interest of the patient's health.

Your support of Assembly Bill 793 will afford physicians from a myriad of provider networks the flexibility to move health information in a way that best benefits patients' health, while keeping pace with today's technology.

Thank you for your attention Chairman Hines and Members.



State of Wisconsin
Department of Health and Family Services

Jim Doyle, Governor
Kevin R. Hayden, Secretary

February 13, 2008

TO: Assembly Committee on Public Health
FROM: Katie Plona, DHFS legislative liaison
RE: Assembly Bill 793

Good morning Rep. Hines and committee members. I'm Katie Plona, legislative liaison for the Department of Health and Family Services. I am here today representing Secretary Hayden, who regrets that he cannot be here.

Thank you for the opportunity to testify in favor of AB 793, and thank you for your prompt attention to this legislation. I also would like to thank Representatives Moulton, Hixson, Davis and Benedict, as well as Senator Erpenbach, for their leadership on AB 793 and to the many cosponsors for their support.

I am pleased to have with me today two people invaluable to the Department's eHealth efforts. Denise Webb is the program manager for the eHealth Initiative and Beth DeLair is our eHealth legal consultant. Beth was previously the associate general counsel and director of compliance at UW Hospital and Clinics.

I would first like to share some prepared remarks and then the three of us will be happy to answer any questions committee members have.

Overview

In recent years, discourse in the health care community about how to remove barriers to health information exchange has increased as more and more providers have the technology to share records electronically. Major studies also have estimated that medical errors in the U.S. have resulted in anywhere from 44,000 to 98,000 deaths annually.

Electronic health information exchange is imperative to the future of health care because it has the power to improve health care outcomes for patients in Wisconsin. In turn, improving the quality and safety of how health care is delivered has the power to reduce medical errors, save lives and stem the rise in health care costs.

With that goal in mind, this bill seeks to balance privacy laws with the application of technology innovations to transform the delivery of health care in Wisconsin.

Wisconsin participated in an 18-month national effort with broad stakeholder involvement to assess the security and privacy issues of health information exchange.

In November 2005, Governor Doyle created by executive order the eHealth Care Quality and Patient Safety Board and charged it with developing a five-year plan for statewide adoption of health information technology and health information exchange.

As part of this process, DHFS staff engaged privacy advocates; health information officers; clinical and hospital providers; technology experts; consumers and others in a long and involved

discussion about how to maintain appropriate statutory privacy protections while breaking down barriers to electronic health information exchange.

Recommendations to change portions of Chapters 51.30 and 146 were the result of that effort and are reflected in AB 793 as five statutory changes. In December 2007, the eHealth Board approved these policy recommendations.

A portion of Chapter 51.30 deals with release of sensitive health care information, namely information about mental health, developmental disabilities and alcohol and other drug treatment. A portion of Chapter 146 deals with the disclosure of general health care information.

While AB 793 is not the only thing we need to do to foster electronic health information exchange, it is an essential first step to remove barriers. It will provide physicians and patients with more information -- and more reliable information -- to make important decisions about what health care treatment is best and safest. Additionally, AB 793 brings Wisconsin law into better alignment with the federal Health Insurance Portability and Accountability Act's (HIPAA) confidentiality and privacy requirements.

Chapter 51.30

I will start with a description of Chapter 51.30. Except under limited circumstances, Chapter 51.30 prohibits the disclosure of mental health, alcohol and other drug abuse (AODA) and developmental disability health care information to providers for treatment purposes unless the patient or the patient's legal representative provides written consent. This requirement is inconsistent with federal law and with other Wisconsin laws governing other types of health care information.

The goal of the 51.30 workgroup was to develop, through a broad-based stakeholder discussion, an agreed-upon set of information covered under s. 51.30 that could be exchanged amongst providers for treatment purposes without patient consent.

Under current law, only certain elements of a patient's treatment record may be released without informed written consent. This includes name; address; date of birth; date of service; diagnosis; medications; allergies; the name of a mental health provider and other relevant demographic information.

Further, these elements may only be released for the current treatment of an individual to health care providers in a "related health care entity," which generally means a clinically integrated care setting or a given health plan. For example, current law would not allow a physician from Dean Clinic to share a patient's health information with a UW physician treating the patient without the patient's written informed consent.

These limitations make the exchange of health care information difficult because, often, the patient's written consent cannot be easily obtained. Physicians need better access to clinical information to make well-informed and quick decisions about the best way to care for a patient. Additionally, Chapter 51.30 is more stringent than federal HIPAA privacy law and Wisconsin laws governing other types of health care information, which permit disclosure of health care information for treatment purposes without patient consent.

To address these limitations, AB 793 makes two key changes to allow the exchange of information physicians need and to allow the exchange of information to any health care provider who has a need to know without the patient's written consent.

First, AB 793 would remove the within a "related health care entity" requirement so important health care information can be more quickly and easily exchanged electronically with any health care provider who is involved with the patient's care and who needs the information to treat the patient. Under the bill, this exchange could occur regardless of whether the provider is part of the clinically integrated setting or health plan where the patient originally received care.

This is important because patients need health care in emergency situations or for specialty services outside of the facility from which they generally receive care. Often, patients are not available or are not easily able to provide consent for disclosure to a subsequent provider prior to seeing that provider.

With the passage of this legislation, Wisconsin law would continue to require the patient's informed written consent to disclose information other than the specific elements permitted for exchange.

Second, AB 793 would add "diagnostic test results" and "symptoms" to the list of elements that may be exchanged without patient written consent. By allowing this type of information to be shared with providers outside a related health care entity, subsequent providers can have access to information that is important to their assessment and the care of the patient presenting to them.

Physicians have indicated that they want the results from biological diagnostics easily accessible because such information is important for the safety of the patient and is a key element in providing high quality care.

Examples of biological diagnostics include lab tests, EKGs and radiology tests. Some stakeholders expressed concern that psychological or neuropsychological testing not be included in the definition of "diagnostics" because such testing is very sensitive and does not affect the assessment and delivery of clinical care. AB 793 is drafted to address this concern by defining "diagnostic test results" as results of clinical testing of biological parameters, but not the results of psychological or neuropsychological testing.

Symptoms were added because they often are used to describe conditions somewhat different from the diagnosis and can be very helpful. A diagnosis is assigned to a group of symptoms. For example, a diagnosis of flu may be based on symptoms of fever, chills and upset stomach. Sometimes patients present with symptoms, but the symptoms at a given point in time may be inconclusive, but still important for health care providers to know.

For example, a patient may tell a mental health provider that he or she is having trouble sleeping, has a loss in appetite, is agitated from time to time and has low energy. That patient has some symptoms of depression, but the symptoms may be incomplete for such a diagnosis, and the provider may decide to monitor the patient for further symptoms. When the same person visits a cardiovascular specialist, that provider would benefit from knowing about the symptoms because they apply to more than one diagnosis.

The 51.30 workgroup identified five areas for further discussion and action, including provider training on security and privacy laws, to make sure the changes in this legislation are implemented successfully. We acknowledge these concerns and understand their importance to various stakeholders. Secretary Hayden has committed the Department to work in the coming days and months with our partners on the items in question. However, with that being said, we

want to emphasize that the bill before you today represents a balance and that the benefits of this legislation outweigh any potentially adverse risks.

Chapter 146

HIPAA, the federal privacy act, creates many of the same privacy protections at the national level that Wisconsin Statute 146 affords Wisconsin citizens. In some instances, however, compliance with two sets of laws creates confusion and barriers to health information exchange because certain provisions of Chapter 146 are more stringent than HIPAA.

The goal of our efforts on Chapter 146, through conversations with 14 stakeholder groups, was to better align Wisconsin law with HIPAA. More specifically, AB 793 updates Chapter 146 to improve physician relations with patients and families through more reliable communication; to provide physicians and patients with more information for decision-making; and to pave the way for inter- and intra-state electronic health information exchange. AB 793 makes three changes to Chapter 146.

First, Wisconsin law, unlike HIPAA, requires documentation of every disclosure of patient health care records.

Under HIPAA, health care providers do not have to track disclosures for purposes related to treatment (providing and coordinating care); payment (billing for services rendered), health care operations (internal business) or for any disclosure made as a result of a written authorization. HIPAA does require documentation of disclosures for state reporting purposes, such as the Wisconsin cancer registry, and HIPAA provides patients with a right to request an "accounting" of these disclosures.

This provision was identified because it is administratively burdensome, unrealistic and time-consuming and does not provide any apparent benefit to consumers.

eHealth Board member Catherine Hansen, the Director of Health Information Services at the St. Croix Regional Medical Center, said her hospital documents about 12,000 medical record releases per year. During the last five years, Catherine said patients made no inquiries about these releases. You can imagine how much more documentation occurs at even larger facilities like UW.

Additionally, since Wisconsin law regarding documentation of disclosures of patient health information differs from federal law, compliance with both laws is challenging. AB 793 improves Chapter 146's consistency with HIPAA.

Second, Chapter 146 allows health care providers to receive patient health care information without the patient's consent for any purpose related to providing care to the patient other than what is covered under Chapter 51.30. But, it prohibits a health care provider who has received patient health care information from an outside institution from disclosing that same information to a subsequent health care provider.

This prohibition has a significant impact on electronic exchange based on how eHealth systems are configured and how exchange is likely to occur between different exchange models.

For example, under current law, Meriter Hospital could receive health information from UW for a patient and incorporate that information into the Meriter record. Then, if St. Mary's Hospital

requests information from Meriter about that same patient, Meriter can only release its "own" information about that patient to St. Mary's and cannot release the UW information. In other words, if a patient's information is originally from UW and is appropriately released to Meriter, Meriter cannot under current law share the information with St. Mary's.

AB 793 removes the prohibition on re-disclosure and allows for re-disclosure for treatment purposes and under other limited circumstances prescribed under current law.

Third, Wisconsin law makes sharing health information with a patient's family, friend or other person involved in the patient's care difficult because it requires the patient's written consent. As mentioned earlier, written consent is often difficult to obtain because the patient is not available or otherwise not capable of providing written consent.

In contrast, HIPAA recognizes that one or more individuals may be "involved in the care of the patient" and creates provisions that make it easier for a health care provider to disclose health care information about that patient appropriate to the level of involvement the individual has with the patient's care.

Right now, when a spouse accompanies a patient to the emergency room, she understandably wants to know what has happened to the patient and what the prognosis and treatment plan are. Similarly, an adult child might be responsible for coordinating care for an elderly parent and may need to know clinic visit dates and times, laboratory tests and results and the need for medications.

To address this situation, AB 793 allows health care providers to disclose health information to a patient's family, friend or another person the patient identifies as being involved in the patient's care under two conditions. The first is if the patient provides informal permission, rather than formal written consent. The second is if the patient is not physically available or physically or cognitively able to grant informal permission, a health care provider would be permitted to use his or her professional judgment to determine whether disclosing the information is in the best interest of the patient and the patient would otherwise allow the disclosure. These changes better align Wisconsin law with federal law.

Under the proposed change, informed consent would still be required for a health care provider to release copies of health care records to family and friends involved in the patient's care.

Thank you again for the opportunity to testify in favor of AB 793 and share with the committee the reasons why we believe this legislation is essential to allowing electronic health information exchange. We are happy to answer any questions committee members may have.

Attachments:

1. Chart on Chapter 51.30 comparing current law, HIPAA and AB 793
2. Chart on Chapter 146 comparing current law, HIPAA and AB 793
3. Chapter 51.30 workgroup items for further discussion and action
4. eHealth Board membership
5. Chapter 51.30 workgroup membership
6. Organizations interviewed on Chapter 146
7. AB 793 fiscal note

from CHJ 2/13/08

Disclosure of Treatment Records for Mental Health, AODA, Developmental Disability Services, Wisconsin Statute 51.30

Current State Law	HIPAA	AB 793
<p>Wisconsin Statutes Section 51.30 requires informed consent before disclosure of treatment records created in the course of providing services to individuals for mental illness, developmental disabilities, or AODA at a treatment facility –</p> <p>Except:</p> <p>* in a medical emergency (undefined);</p> <p>* the following elements in a related health care entity:¹</p> <ol style="list-style-type: none">1. Patient's name2. Address3. Date of birth4. Date of service(s)5. Diagnosis6. Medications7. Allergies8. Other relevant demographic information9. Name of mental health provider(s)	<p>Does not require consent except for psychotherapy notes.</p>	<p>Allow disclosure, without consent, of the following information in the 51.30 treatment record to all treating providers with a need to know:</p> <ol style="list-style-type: none">1. Patient's name2. Address3. Date of birth4. Date of service(s)5. Diagnosis6. Medications7. Allergies8. Other relevant demographic information9. Name of mental health provider(s) <p>10. Diagnostics (biometrics such as labs not psychological testing)</p> <p>11. Symptoms</p>

¹ "related health care entity means one of the following:

- a. An entity that is within a clinically integrated care setting in which individuals typically receive health care from more than one health care provider.
- b. An organized system of health care in which the health care providers hold themselves out to the public as participating in joint arrangement and jointly participate in activities" (s.51.30(4)(b)8g).

Disclosure and Re-disclosure of General Health Care Information, Wisconsin Statute 146

Area	Current State Law	HIPAA	AB 793
Documentation	As currently written, Wisconsin Statutes Sections 146.82(2)(d), 146.83(3) require documentation of every disclosure (written, oral, etc.) for every purpose. This is an extremely burdensome standard for providers to meet and takes time away from patient care.	HIPAA requires documentation of disclosure for any purpose except the following: (1) treatment (providing and coordinating care), (2) payment (billing for services rendered), (3) health care operations (internal business) purposes, or (4) for any disclosure made pursuant to a written consent. Examples of disclosures that would have to be documented include, but are not limited to, disclosures made that are required or permitted by law (e.g. mandatory child and elder and adult-at-risk-abuse, and public health reporting), disclosures to law enforcement and coroners, and disclosures for research activities. In essence, HIPAA requires documentation of disclosures outside what a patient would likely consider to be "acceptable" and part of every day business.	Rewrite Wisconsin Statutes Section 146 to mirror 45 CFR 164.528 so as to require limited documentation of disclosures.
Re-disclosure	Wisconsin Statutes Section 146.82(2)(b) requires that when information is disclosed without patient consent, the recipient must keep the information confidential and may not re-disclose it.	HIPAA is silent on re-disclosure.	Delete Wisconsin Statutes Section 146.82(2)(b), and replace it with language that allows disclosure and re-disclosure of general health information without patient consent.
Disclosure to Individuals Involved in the Care or	Wisconsin Statutes Section 146.82 and 146.83 require patient consent to provide written	HIPAA allows covered entities such as health care providers to disclose health information to family and friends "involved in the care of the patient." Involved in the care of the patient is	Rewrite statute to allow oral disclosure of general health information to individuals involved in the care or treatment of the patient with patient agreement (not formal

<p>Treatment of the Patient</p>	<p>or oral disclosure of health information to individuals involved in the care or treatment of the patient.</p>	<p>defined in HIPAA, but is broadly construed to apply to anyone that might be helping to support a patient through their medical care (physically, financially, mentally, and spiritual). When patient health care information is being disclosed to family and/or friends, HIPAA requires that either the patient agrees or has the right to object to the disclosure, or that the health care provider uses his or her professional judgment and determines that the patient would not object to the disclosure or that the disclosure is in the patient's best interest (a subjective standard). The amount of information disclosed is limited to that person's involvement in the care of the patient.</p>	<p>consent). Retain requirements for patient consent to disclose any copy of a patient's medical record.</p>
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Chapter 51.30 workgroup items for further discussion and action

(1) **Clarification of 'Provider.'** The workgroup did not reach consensus on whether to statutorily limit which providers may receive 51.30 records for treatment purposes without patient consent.

Some members proposed limiting the types of health care providers that could receive 51.30 records without patient consent to those providers that directly interact with a given patient. Others raised concerns that such a limitation would not be feasible in an electronic exchange environment.

Additional discussion is needed in this area with consideration of: (a) Appropriate sanctions for unauthorized access and disclosure; (b) Regular access audits that are not complaint driven; and (c) Relevant requirements under HIPAA.

(2) **Liability and Penalty for Unauthorized Disclosure.** Wisconsin statutes related to liability and penalty for unauthorized disclosure should be reconsidered in conjunction with the proposed change to s. 51.30. Many workgroup members suggested that this discussion include consideration of penalties/sanctions for inappropriate access and/or disclosure linked to professional licensure (e.g. MD, RN) and as well as institutional licensure.

(3) **Provider Education.** The Workgroup identified the following two related yet separate concerns that could be addressed by enhanced provider training: (a) misunderstandings and misperceptions of applicable privacy laws and regulations on the part of many providers; and (b) the perception that a mental illness diagnosis, rather than presenting symptoms, indicate treatments on the part of many mental health consumers. The workgroup reached consensus on the following:

- Training on all privacy and security standards should be mandated. The training should emphasize Wisconsin law and its interface with federal laws and what can and cannot be shared and when it should include numerous easy-to-understand examples and be available at little or not cost.
- Treating providers should be encouraged to participate in anti-stigma training presented in collaboration with a variety of relevant stakeholders. This training should be developed collaboratively and in accordance with existing evidence-based models.

(4) **Notification.** The workgroup suggested that implementation of this proposed change should be delayed to ensure appropriate advance notification of the public and providers, but did not propose duration of such a delay. Some members suggested that the annual informing of patient rights and a DHFS memo should be considered as possible mechanisms for notification.

(5) **Clarification of s. 51.30.** The workgroup noted that various terms and conditions in 51.30 are not clearly defined, leading to variations in interpretation and application of the law. Thus, in conjunction with the changes currently recommended, the group suggested reconsidering and possibly amending statute 51.30 to better clarify the conditions and types of information intended to be protected by the statute. Clarification efforts should include an assessment of cross-referenced statutes.

Wisconsin

e Health Care Quality and Patient Safety Board

Chair: Kevin Hayden, Secretary, Department of Health and Family Services.

Betsy Abramson, Elder Law Attorney and Consultant.

Christopher Alban, MD, Clinical Informaticist, Epic Systems Corporation.

Bevan Baker, Commissioner of Health, City of Milwaukee Health Department.

Edward Barthell, MD, Executive Vice President, CIO, Infinity Healthcare.

Gary Bezucha, FACHE, CEO, North Central Health Care.

Patricia Flatley Brennan, Professor of Nursing and Industrial Engineering.

Catherine Hansen, Director, Health Information Services, St. Croix Regional Medical Center.

Ravi Kalla, CEO and President, Symphony Corporation.

Don Layden, Executive Vice President, Corporate Development, Metavante Corporation.

Michael L. Morgan, Secretary, Department of Administration.

Lois Murphy, IT Specialist, Veterans Administration.

Candice Owley, RN, President, Wisconsin Federation of Nurses and Health Professionals.

Debra Rislow, CIO and Director of Information Systems, Gundersen Lutheran.

Peg Smelser, Chief Operating Officer, Wisconsin Education Association Trust.

Lon Sprecher, Senior Vice President and COO, Dean Health Insurance.

Justin Starren, MD, PhD, Director, Biomedical Informatics Research Center, Marshfield Clinic Research Foundation.

David Stella, Secretary, Department of Employee Trust Funds.

John Toussaint, MD, President and CEO, ThedaCare.

Hugh Zettel, Director, Government and Industry Relations, GE Healthcare Technologies.

Chapter 51.30 workgroup membership:

Betsy Abramson, Elder Law Attorney/Consultant

Kathy Bretl, Deputy Director, Mendota Mental Health Institute

Ted Bunck, Director, Central WI Center for the Developmentally Disabled

Mike DeMares, Clinical Manager, Waukesha County Department of Health and Human Services

Sue Gadacz, Women's AODA Treatment Coordinator, WI Department of Health and Family Services
(DHFS), Bureau of Mental Health & Substance Abuse Services (BMHSAS)

Jay Gold, Senior Vice President, MetaStar

Dianne Greenley (Kit Kerschensteiner), Supervising Attorney, Disability Rights Wisconsin

Shel Gross, Director of Public Policy, Mental Health America of Wisconsin

Carla Jones, Senior Staff Attorney/Privacy Officer, Marshfield Clinic

Lowell Keppel, President-elect, Wisconsin Academy of Family Physicians (WAFP)

Susan Manning, Independent Health Care Consultant

Jeff Marcus, Medical Director, Central WI Center for the Developmentally Disabled

Gloria Marquardt, Privacy Officer, WI Department of Corrections

Kate Nesheim, Agency Coordinator, Wisconsin Association on Alcohol and Other Drug Abuse

Jennifer Ondrejka (Gerald Born), Executive Director, Wisconsin Council on Developmental
Disabilities

Kim Pemble, CIO and Vice President, Synergy Health

Teresa Smithrud, Director, HIM/Privacy Officer, Mercy Health System

Matthew Stanford, Associate Counsel, Wisconsin Hospital Association

Susan Turney (Jeremy Levin), Executive Vice President/CEO, Wisconsin Medical Society

Carol Weishar, Director of Medical Information and Transcription, Advanced Healthcare

Michael Witkovsky, Consulting Psychiatrist, DHFS, BMHSAS

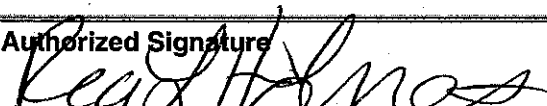
Hugh Zettel, Director, Government and Industry Relations, GE HealthCare Technologies

Dan Zimmerman, Policies & Contract Administrator, DHFS, BMHSAS

List of stakeholders who provided comments on proposed changes to Chapter 146:

1. Wisconsin Hospital Association
2. Dane County Health Care Providers Considering Piloting "Care Everywhere," including
 - a. Meriter
 - b. St. Mary's
 - c. Dean
 - d. UW-Madison
 - e. UWHC
 - f. UWMF
 - g. GHC
3. AIDS Network
4. Wisconsin Medical Society
5. Advanced Healthcare (Stakeholder in ED Linking Project)
6. Center for Patient Partnerships
7. Care Wisconsin (Formerly Elder Care of Wisconsin)
8. HIPAA COW
9. AHIMA
10. Wisconsin Alzheimer's Association
11. Wisconsin Nurses Association
12. WHIE
13. Domestic Abuse Advocates
14. Wisconsin Coalition Against Sexual Assault

Fiscal Estimate - 2007 Session

LRB Number 07-3672/5		Introduction Number AB-0793	
Description Treatment records and patient health care records			
Fiscal Effect State: <input checked="" type="checkbox"/> No State Fiscal Effect <input type="checkbox"/> Indeterminate <input type="checkbox"/> Increase Existing Appropriations <input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Increase Costs - May be possible to absorb within agency's budget <input type="checkbox"/> Decrease Existing Appropriations <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Create New Appropriations <input type="checkbox"/> Decrease Costs			
Local: <input checked="" type="checkbox"/> No Local Government Costs <input type="checkbox"/> Indeterminate 1. <input type="checkbox"/> Increase Costs 3. <input type="checkbox"/> Increase Revenue 5. Types of Local Government Units Affected <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory <input type="checkbox"/> Towns <input type="checkbox"/> Village <input type="checkbox"/> Cities 2. <input type="checkbox"/> Decrease Costs 4. <input type="checkbox"/> Decrease Revenue <input type="checkbox"/> Counties <input type="checkbox"/> Others <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory <input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts			
Fund Sources Affected <input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEGS		Affected Ch. 20 Appropriations	
Agency/Prepared By DHFS/ Donna Moore (608) 266-8156		Authorized Signature 	
		Date 2/13/2008	

Fiscal Estimate Narratives**DHFS 2/13/2008**

LRB Number	07-3672/5	Introduction Number	AB-0793	Estimate Type	Original
Description					
Treatment records and patient health care records					

Assumptions Used in Arriving at Fiscal Estimate

This bill makes certain changes to current law regarding the release or redisclosure of patient health records.

There will be no fiscal effect on the Department as a result of this bill. This bill is also not expected to have a fiscal effect on county human services or social services departments.

Long-Range Fiscal Implications

My name is Jay Gold. I am a physician and an attorney. I serve as Senior Vice President, Chief Medical Officer, and Confidentiality Officer of MetaStar, an independent quality improvement organization in Madison. I also serve on the Board of Directors of the Wisconsin Medical Society, as President of the Dane County Medical Society, as Chair of the state Heart Disease and Stroke Program, and on the faculties of the Medical College of Wisconsin and Marquette Law School. For five years I served as Chair of the Independent Review Board, a gubernatorially-appointed board charged with reviewing the potential uses of physician office visit data.

MetaStar is a 501 (c)(3) public benefit corporation that does not take official positions on proposed legislation. I testify today as to my own personal support of AB793. Greg Simmons, MetaStar's President and CEO, who accompanies me today, is in accord with my remarks.

I served on the work group convened by the Department of Health and Family Services to look at the barriers to the exchange of health care information in Wisconsin. I concur in that group's recommendations for changes to Wisconsin Statutes 51.30 and 146.

It is essential to health care quality that information be exchanged freely and timely among those responsible for a patient's care. In the absence of complete information about a patient's condition, diagnostic and treatment determinations may be faulty, with resulting detriment to the patient's health. Where, as often happens, a patient receives care in different facilities that do not have formal relationships with one another, there is a particular risk that those caring for a patient in one facility will not have access to important information that was obtained in another. Statute 51.30 currently writes such obstacles into law.

Informed consent, of course, is essential for allowing patients to direct their health care. But where there is a strong chance that information may be essential to a patient's care, like information about symptoms and test results, the chances of harm to the patient from a written consent requirement outweigh the chances of harm from the exchange of information. A patient may not be in a position to give consent. Where consent can be obtained, obtaining it takes time, and that time may be precious; the needed time may be even greater if staff have questions about the consent and approvals are needed. The proposed changes to 51.30 in the bill under consideration would go a long way toward mitigating such obstacles.

Similar points can be made about the proposed changes to 146. A facility treating a patient may be quite hampered in the absence of information that can be obtained only by redisclosure from another. The time- and labor-consuming burden of documenting all disclosures detracts from the ability to provide optimal patient care with minimal benefits, with the exceptions set forth in HIPAA. And the inability to share health information with those closest to a patient, even when the patient has given express oral consent, not only may deny information to those closest to a patient, but may deny a physician additional important information that those involved in a patient's care can supply.

The proposed changes to the law would continue to safeguard patients' basic privacy rights. The best protection of the privacy of patients is the existence of information systems that ensure that information goes only to those with authorized access and who have a need to know that information. Most current electronic health systems contain such security safeguards. Patients will continue to enjoy privacy protections under HIPAA, under tort law, and under the revised Wisconsin statutes. What AB 793 would do is to enable physicians and other health care providers to make determinations that are quicker and based on more complete evidence than is possible under current law. The public clearly will benefit from this change.



MARSHFIELD CLINIC®

Testimony before the Assembly Public Health Committee
Robert Phillips, M.D.
Internal Medicine/Geriatrics/Government Relations, Marshfield Clinic
Wednesday, February 13, 2008
AB 793-Treatment Records and Patient Health Care Records

Chairman Hines, members of the Assembly Public Health Committee and staff, I am Dr. Robert Phillips, a practicing internist and geriatrician at Marshfield Clinic and Medical Director of Government Relations. I am here today to testify for information only regarding AB 793-relating to treatment records and patient health care records.

Marshfield Clinic, an integrated outpatient health care system, has as our mission to provide high quality health care to all who access our system, to engage in basic science and clinical research to improve patients' and citizens' lives, and to train the next generation of physicians with an emphasis on rural practice. Marshfield Clinic's system comprises 41 soon to be 47 centers in north central Wisconsin, served by approximately 800 physician specialists providing primary, secondary and tertiary medical/surgical care and staffed by 6500 employees.

Marshfield Clinic embraces the Institute of Medicine's 6 aims for the transformation of the 21st century health care system with health care that is safe, effective, patient-centered, timely, efficient, and effective. Marshfield Clinic urges the Wisconsin Legislature to use these six aims as a yardstick to test the benefit of pending legislation for Wisconsin citizens.

Marshfield Clinic has created a state of the art electronic medical record and information technology system which connects all of our centers; provides an appropriate free flow of medical information to insure safe and timely care for the 365,000 unique patients we saw in 2007 representing about 1.8 million visits; provides efficient care which avoids duplication of diagnostic tests and consultations addressing health care costs; and provides the most current evidence based scientific care with clinical decision support integrated into our medical record so that patients receive the latest best care at the time of a medical encounter or office visit.

AB 793 will allow Wisconsin treatment records for mental health, substance abuse and developmental disability conditions to be readily exchanged with health care providers across health systems in order to provide safe, timely, effective, patient-centered, efficient and equitable care in emergency rooms, hospitals and offices. With patients dealing with multiple chronic conditions such as diabetes, congestive heart failure, chronic kidney disease, and chronic lung disease, it is imperative that treating physicians have access to as complete a picture of a patient's health condition including mental health, substance abuse, and developmental disability conditions in order to insure as safe and comprehensive an evaluation as possible. Adding "diagnostic test results" and "symptoms" to the list of elements that can be exchanged without consent and allowing this data to be exchanged with any health care entity involved in a patient's care will facilitate the care of all patients. As a practicing internist who cares directly for patients in the office and nursing facility, having the most

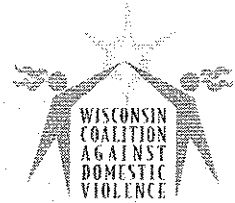
reduces errors and reduces health care costs. In addition, safeguards in the bill are included that will forbid use of the patient's record for other purposes without the patient's written consent.

Concerning the confidentiality of patient general health care records, AB 793 would allow re-disclosure of health information that facilitates electronic health information exchange while retaining limitations on re-disclosure to prevent unauthorized release. It will eliminate the requirement to document all disclosures, which is time consuming and takes away from a health care provider's time with patients. It will allow for health information disclosure to a patient's family, friend or another person identified by the patient; if informal consent is provided or if the patient is not physically available or physically or cognitively able to grant informal permission, a health care provider can substitute his/her best judgment to determine whether the release is in the patient's best interest and the patient would otherwise allow the disclosure.

AB 793 makes Wisconsin law more like the federal HIPAA law which allows health information to be exchanged with treating providers at the time care is provided without written permission because in an acutely ill situation time is critical and the emphasis should be on safe, timely, efficient, effective, patient-centered and equitable care. AB 793 is a good piece of legislation and will modernize Wisconsin health care information exchange.

Thank you.

Memo



To: Assembly Committee on Public Health

From: Josh Freker, Policy Director, WCADV, 608-255-0539, joshf@wcadv.org

Date: February 13, 2008

Re: Informational testimony for AB 793

Thank you for providing an opportunity to submit testimony today regarding AB 793. I represent the Wisconsin Coalition Against Domestic Violence (WCADV), the statewide voice for victims of domestic violence and the local programs in every county of our state that serve them.

WCADV provides this testimony for information only, neither supporting nor opposing this legislation. In general, our agency is in support of the expansion of inter-operable and intra-operable eHealth throughout Wisconsin because of the great potential benefits to consumers in improving quality, coordination, accessibility and reducing medical error. Our agency's Health Care Project Consultant, Betsy Abramson, is the sole consumer representative on the Governor's eHealth Board and she has also participated in many of the consumer privacy and security interests. Through her participation, we will continue to monitor the development, expansion and implementation of eHealth software and provider protocols that strive to maximize eHealth's potential for consumer quality and safety.

"Safety" in situations of domestic violence involving the health care system means much more than traditional "safety" of health care services. eHealth care provides great potential promise for victims of domestic violence. A well-designed software system with appropriate provider protocols can help create systems that use eHealth to prompt regular health care provider private patient screening for domestic violence. The systems can offer providers appropriate sensitive language in asking about domestic violence and responding to any disclosures. Systems can also be designed to assist health care providers by providing links to appropriate community resources, printable safety plans to provide victims, prompts to ask questions about safe individuals to whom patients would want information disclosed or prohibited from access, and that will alert the next providers of possible abuse issues, etc. These procedures all have the potential to increase a victim's safety and improve continuity of care.

It is for these reasons that we are concerned about AB 793's language permitting disclosure of health care information to family members or others presumed to be "directly relevant to the involvement by the member, relative, friend or individual in the patient's care" and related language, in the bill's section 9, pages 4-5. This disclosure is subject only to the health care provider determining, in his or her professional judgment, that this release be "in the best interest of the patient." Without prompts to screen for abuse, we are concerned that this statutory language alone is inadequate to alert providers to situations of domestic violence that will not be regularly considered by health care providers.

Unfortunately, our agency and our member organizations are familiar with many cases of abusers manipulating health care providers and presenting themselves as "concerned family members," when in fact they use the health care information to greatly endanger and harm these patients. For example, in a recent case an elderly man insisted that as husband he was entitled to receive information about the nursing home facility to which his wife was being transferred – even though the patient had a restraining order against him. In other situations, abusers access medical records to determine whether their victims have disclosed domestic violence to their providers or law enforcement have been contacted.

For these reasons, we urge consideration of federal HIPAA law's administrative rule, known as the "Office of Civil Rights HIPAA Privacy Rule," issued December 3, 2002 and revised April 3, 2003, at 45 CFR § 164.502(g)(5). This federal rule specifically addresses the issues of abuse and neglect by including the following language:

- more -

(5) **Implementation specification; Abuse, neglect, endangerment situations.** Notwithstanding a State law or any requirement of this paragraph to the contrary [permitting disclosure], a covered entity may elect not to treat a person as the personal representative of an individual if:

(i) The covered entity has a reasonable belief that:

(A) The individual has been or may be subjected to **domestic violence, abuse or neglect by such person; or**

(B) Treating such person as the personal representative **could endanger the individual; and**

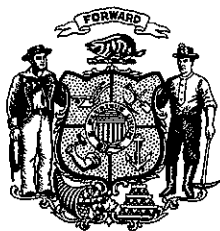
(ii) The covered entity, in the exercise of professional judgment, decides that **it is not in the best interest** of the individual to treat the person as the individual's personal representative.

(Emphasis added.)

We believe that the changes proposed in 2007 AB 793 should be coupled with language such as that included in the federal rule cited above, either in the statute, in administrative rule, or in required specifications for eHealth implementation and training. This would be totally consistent with federal law and provide important protections for patients who are potential victims of abuse and violence.

Again, the Wisconsin Coalition Against Domestic Violence is very supportive of the eHealth initiative and is committed to continuing to work with the legislature and DHFS to ensure implementation that best addresses patient quality and broadest possible safety.

Due to the short notice, we regret that we were unable to attend the hearing this morning in person. If you have questions about our testimony, I encourage you to contact our Health Care Project Consultant, and member of the Governor's eHealth Patient Quality and Safety Board, Betsy Abramson, at 608-332-7867, abramson@mailbag.com.



Wisconsin Council on Mental Health

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February 13, 2008

Hon. J.A. Hines, Chairperson
Assembly Committee on Public Health
State Capitol, Room 220 South
P.O. Box 7882
Madison, WI 53707-7882

Honorable Members
Assembly Committee on Public Health

Re: 2007 Assembly Bill 793

Dear Members:

I am writing as Chairperson of the Wisconsin Council on Mental Health regarding Assembly Bill 793. I write to express concerns raised by the Council regarding recommendations of the 51.30 Workgroup which were incorporated into this bill. However, since the bill was introduced only this week, the Council has not expressed a position on it.

The Council is concerned that the committee did not have sufficient time to address the issue of who should receive this information. That concern would apply to the bill which includes scant limitation on who may receive information about an individual's mental health care.

The bill would remove the requirement that such information be shared only within a "related health care entity." This means that the information could be shared without consumer consent with a "health care provider" as defined in Sec. 146.81(1), Wis. Stats. This list is very long and includes providers such as podiatrists, optometrists, massage therapists, dieticians, etc. Many mental health consumers feel that the list of who may receive information without their consent should be much narrower.

The Council's concern was underlined by a great deal of time invested in these issues. We heard from numerous consumers across the State who shared their real life experiences. Many told of providers discrediting their symptoms once a history of mental illness was documented. The health of many of these individuals suffered due to their treatment in emergency rooms and by health care providers in other settings.

Members of the Council understand that social benefits may accrue due to implementation of electronic information sharing. In general, the Council believes that the workgroup reached an appropriate balance by increasing the information that can be shared without consumer consent to include diagnostic tests and symptoms. However, the bill still fails to address the Council's concern. Mental Health Consumers deserve a better bill.

The Wisconsin Council on Mental Health, is the body created under state law to, inter alia:

" (a) Advise the department, the legislature and the governor on the use of state and federal resources and on the provision and administration of programs for persons who are mentally ill or who have other mental health problems, ... and for other mental health related purposes.

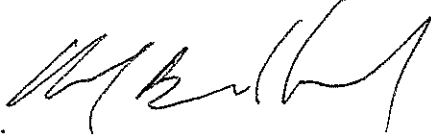
** * **

" (d) Serve as an advocate for persons with mental illness."

Sec. 51.02(1), Stats.

Very truly yours,

Wisconsin Council on Mental Health

A handwritten signature in black ink, appearing to read "Mike Bachhuber", written over a horizontal line.

By:

Mike Bachhuber, Chairperson



Wisconsin Health Information
Management Association

2350 South Avenue, Suite 107
La Crosse, WI 54601-6272
608.787.0168 FAX 608.787.0169

Website www.whima.org

E-mail whima@execpc.com

To: Members of the Assembly Public Health Committee

From: Jennifer Laughlin, President

Date: February 12, 2008

RE: Support for AB 793, Important eHealth Legislation

Assembly Bill (AB) 793 will improve communication in the delivery of health care in Wisconsin. Wisconsin Health Information Management Association (WHIMA) supports this proposal as a means to facilitate quality patient health care.

Provider communication improves about mental health treatment

The bill permits health care providers to communicate statutory defined information about a patient's mental health with other health care providers involved in the patient's care. The availability of this information is essential to preventing adverse drug interactions and unnecessary diagnostic tests. A key component of patient care is a care plan addressing both mental and physical health of the patient. The information shared becomes critical content to the patient's care plan.

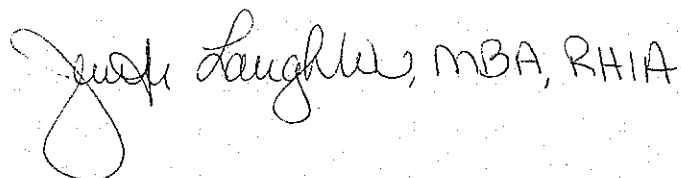
Exchange of information among health care providers improves

The bill permits health care providers to communicate with other providers regarding all health care records in a provider's possession by removing a prohibition on the re-disclosure of health care records received by one provider to another provider. For example, if a patient received treatment from multiple health care providers, AB 793 would permit each of the providers to share health care records with each other for the purpose of rendering care.

Communications with family and friends involved in patient care improves

The bill permits providers to more easily communicate with those family or friends involved in the care of a patient. Providers need the involvement of the patient's family or friends to reinforce and support the patient in their treatment.

WHIMA supports the eHealth initiatives and passage of AB 793. Both efforts move us forward for appropriate health information exchange.

 Jennifer Laughlin, MBA, RHIA

WISCONSIN HOSPITAL ASSOCIATION, INC.



To: Members of the Assembly Committee on Public Health,
Representative Hines, Chair

From: Paul Merline, Vice President of Government Affairs
Matthew Stanford, Associate Counsel,

Date: February 13, 2008

Re: Support for AB 793, Important eHealth Legislation

Assembly Bill (AB) 793 aims to improve communication among health care providers and others who care for patients by facilitating the development of better, more comprehensive electronic medical records. The Wisconsin Hospital Association (WHA) supports this proposal as a means to further advance Wisconsin's already nationally recognized high levels of patient health care quality and safety.

Improving provider communication about mental health treatment

The bill permits physicians to communicate limited information about a patient's mental health with other treating physicians and care teams. Access to this information is critical to avoiding adverse drug interactions and redundant diagnostic tests, and to creating treatment plans that take into consideration both a patient's mental and physical health. Absent access to this information, a patient's physician could unknowingly provide redundant or even inappropriate care.

Removing these barriers to communication also remove barriers to the fuller incorporation of mental health records into an electronic medical record. If regulations are made more consistent for both mental health and general health records, it is more likely that patients receiving mental health treatment will have their health information kept in an interoperable electronic medical record and therefore quickly accessible by their provider.

Improving the exchange of information across multiple facilities and providers

The bill encourages facilities to develop electronic medical records that can communicate with other facilities by removing a prohibition on the re-disclosure of non-mental health information received by one facility to another facility. For example, if a patient received treatment at multiple hospitals, this would permit each of the hospitals to share non-mental health records with each other.

Reducing costs by reducing variation between federal and state laws

The bill removes documentation of disclosure requirements unique to Wisconsin that create a significant administrative burden and require electronic medical record developers to build additional functionality for Wisconsin providers. Safeguards remain under the federal HIPAA law which requires the documentation of many disclosures.

Improving communications with family and friends involved in patient care

The bill permits providers to more easily communicate with those family and friends involved in the care of a patient. Safeguards remain to prohibit releases of records to family and friends that would not be in the best interest of the patient, such as if the physician has reason to believe the family member might use the record to harm the patient.

WHA thanks the the Governor's eHealth Care Quality and Patient Safety Board that reviewed and approved theses proposals; the numerous consumer and provider eHealth workgroups that developed the proposals; the Department of Health and Family Services which facilitated the work of the eHealth Board and its committees and aided in the development of this legislation; and Assembly co-authors, Representatives Moulton, Davis, Hixson, and Benedict, for bringing this bill forward.

While there are additional statutory barriers to communication and electronic medical records that we and others would like to see removed, WHA supports this bill as a good first step.

**Comments to Assembly Committee on Public Health
Regarding AB793**

**Shel Gross, Director of Public Policy
Mental Health America of Wisconsin
(formerly the Mental Health Association)**

I would like to provide information to the committee regarding AB793.

AB793, in part, codifies changes to 51.30 Wi. Stats. governing the sharing of mental health treatment information without the consent of the consumer (a term generally favored by persons receiving mental health services). This issue is one of great sensitivity for people with mental illnesses due in large part to the continuing stigma related to mental disorders. While we would all like to believe that such stigma would not impact the practice of medicine, unfortunately this is not always the case. I have attached a number of scenarios that illustrate the way in which medical care has been compromised when the fact of a person's mental illness becomes known to a physician. I do not know how widespread these types of situations may be but the fact that they occur at all is germane to the discussion of this bill.

I gathered these stories while working with Rep. Strachota last session on more modest changes to 51.30 on which the current changes are based, and again this past year as part of the eHealth Board's workgroup addressing this issue. Mental Health America of Wisconsin (MHA) has been involved in various efforts to better integrate mental health care with physical health care because the two are truly linked. To the degree that increased sharing of records through health information exchange can facilitate this, we are supportive of these efforts. We believe it is always preferable to do this sharing with the consent and involvement of the consumer and to this end it is important to note that AB793 does not require, only allows, sharing without consent.

AB793 limits the information that can be shared without consent to fairly discrete data such as diagnosis, medications, name of mental health provider and so forth. It explicitly would not allow sharing without consent of narrative types of information such as treatment plans, admissions notes, discharge summaries and the like. This was an essential part of the compromise to which I, and other mental health advocates and providers, agreed as part of the 51.30 workgroup. While even knowledge of a diagnosis can lead to the sorts of situations described in the attachment, the additional information in the narrative material can be much more sensitive and personal and should not be shared without the consent of the consumer. I would oppose this legislation if amendments were proposed that would expand the information that could be shared without consent.

www.mhawisconsin.org

I would also like to have on the record that the mental health advocates on the 51.30 workgroup felt it was critical that medical providers receive anti-stigma training as a condition of expanding the information that could be shared without consent to address the situations described in the attachment. This was not part of the formal compromise that was reached with regard to these issues. However, the Department of Health and Family Services has verbally indicated to me that they intend to make this part of any training to providers about the changes contained in this bill and other changes related to development of eHealth. MHA is committed to assisting with this process.

Also, we had some discussion as part of the 51.30 workgroup as to whether there should be some limitation on the providers identified in Chap. 146 Wi. Stats. who would have access to the mental health information. Many consumers and advocates feel that not all providers need this information. This issue was not included in the final compromise of the committee but remains of concerns to advocates.

The other portions of AB793 deal with Chap. 146 Wi. Stats. These issues were not addressed in the workgroup on which I served so I was not directly involved in discussions about this language. However I do know there are concerns about disclosure of health care information to family members or others subject only to the health care provider determining, in his or her professional judgment that this release be "in the best interest of the patient." There are times when adults with mental illnesses do not wish disclosure to certain family members. And there are individuals who may be subject to domestic abuse for whom the sharing of certain information can increase the risk to them. Electronic medical records can be useful in prompting providers how to be alert for such situations. However you may want to consider language that explicitly recognizes that information need not be shared if the provider determines that doing so can endanger the individual.

I want to express my appreciation to the Department of Health and Family Services for involving me and other advocates extensively in addressing the issue of sharing mental health information.

Perspectives on Sharing of MH Information

The following perspectives were provided in response to a request I made to mental health consumers about their experiences with medical personnel during my tenure on the eHealth Board's 51.30 workgroup.

A Consumer from Madison relates this story:

In 2001 I was employed full time working in the mental health field and covered by private insurance. My psychiatric illness was stabilized at that point. I had a history of angina. One day at work I started having chest pains, which worsened during the day. I also began having shortness of breath. I called my insurer and they told me to go to the emergency room. A friend of mine, who also happened to be a consumer, came with me. At the ER they started an IV and did an EKG. Then we sat for a long time waiting for the staff to return. After what seemed like a long time my friend checked with the nurse who said they were trying to call the doctor. I contacted my pastor, who has always been a strong source of support for me, and he drove to the hospital. By the time he came I had been in the ER for over an hour and the pain was getting worse. So my pastor went out to see if he could find out what was going on. He learned that the doctor they were trying to reach was my psychiatrist because they wanted to find out if I might be having a panic attack. When they reached my psychiatrist he told them that given the EKG readings they should be talking with a cardiologist. At that point, and with the advocacy of my pastor, my complaints were finally taken seriously and I was admitted for treatment of my heart attack. I still believe that if my pastor hadn't been there (he was known to hospital staff since he would visit other members of his congregation) my complaints would not have been taken seriously. I know three other mental health consumers who were seen in the ER, released, and died within in a few days of medical ailments.

Despite this experience this consumer believes limited sharing of information is important. She believes that physicians who are appropriately trained will be more accommodating of the needs of people with mental illness who they may be treating for other conditions. But she stresses that this assumes a lot in terms of their training. She also believes it is important for medication information to be shared. However, she does not think it appropriate or necessary to share treatment plan information, progress notes or the like.

A Consumer from Milwaukee writes:

I am adamantly opposed to the sharing of psychiatric medical information without the consent of the consumer. First of all, my psychiatric treatment information is MINE. Second, just because I am a person with a mental illness, does not mean I need the system making decisions for me! Third, there is stigma and prejudice in the system and I want to be able to control who has access to my psychiatric information.

Personally, I find it totally offensive that this option is even being considered. And, I strongly believe it will lead to people NOT seeking treatment. It certainly would deter me.

This comment was endorsed by two other consumers responding to the email request for feedback.

The original writer adds this story of stigma:

My mother had a history of mental illness, and because of that, was often not taken very seriously by her medical doctors. She complained for a long time about pain and other pelvic problems, but she wasn't taken seriously. By the time they finally DID look into it, she had tumors the size of grapefruit. At only 54 years old, she died of cancer. Who knows what would have happened if they'd listened to her at the beginning? Stigma and discrimination against people with mental illness doesn't just "simply" hurt our feelings, they can have serious consequences on our health!

Last year at a legislative hearing on the 51.30 changes a parent of a person with mental illness from the Green Bay area related this story:

Her son suffered a knee injury after a fall from a mountain bike during a race. She described her son as intelligent and articulate and in recovery from his mental illness so that it would not be obvious to anyone. He went to the ER after the fall complaining of severe knee pain. His knee was moderately edematous (the mother relating this story is a nurse). He listed all his medications and when asked about some of them indicated that they were prescribed for his bipolar disorder. The physician's attitude immediately changed and he was sent home without further examination or medication for his pain. His pain and edema continued. A second physician examined him with a similar response. Only upon a third examination was he appropriately diagnosed and treated for torn meniscus.

Collected by Shel Gross